

REMARKS

Applicant respectfully requests the Examiner to reconsider the merits of the objections and rejections in view of the foregoing Amendment and following remarks.

Upon entry of the above Amendment, claims 104-133 are pending. New claims 104-133 are added. Claims 65-69, 73-76, 79, 82-87, and 90-103 are cancelled.

Applicant thanks the Examiner for indicating during the Examiner interview on July 25, 2005 and during a subsequent telephone conversation with Applicant's representative on September 1, 2005 that he will consider new claims directed to one or more methods filed with a Request for Continued Examination ("RCE") in the instant Application. Applicant is submitting herewith an RCE. Thus, Applicant respectfully requests entry of the above amendment and submits that the above amendment does not constitute new matter. Support for the new claims can be found in the specification and in the claims as originally filed. In particular, support for the new claims can be found, *inter alia*, in original claim 48 and in the specification at page 10, lines 25-27; page 14, lines 16 and 22; Example 2, pages 19-20; and Example 5.

Claim Objections

Applicant points out that the relevant new claims contain a "," in accordance with the Examiner's grammatical suggestion in the final Office Action. Therefore, Applicant respectfully asserts that the claim objections have been rendered moot.

Rejection Under 35 U.S.C. § 112, para. 1

The final Office Action rejects previous claims 65-69, 73-76, 79, 82-87, 90-91 and 92-103 under 35 U.S.C. § 112, para. 1, as purportedly not being enabled by the specification. Applicant traverses this rejection of claims 65-69, 73-76, 79, 82-87, 90-91 and 92-103 based on lack of enablement.

To expedite prosecution, Applicant herewith submits new claims 104-133. Therefore, Applicant respectfully requests the Examiner to withdraw the rejection based on enablement because one of ordinary skill in the art would be enabled by the specification to practice the

invention encompassed by new claims 104-133. In particular, the skilled artisan would be able to practice the invention involving a cartilage enzymatic hydrolysate, a tomato extract and/or an *Acerola* extract.

Regarding a cartilage enzymatic hydrolysate, enclosed with the submission of this Amendment and Reply is a copy of U.S. Patent No. 3,862,003, issued to Okuyama et al. on January 21, 1975 (the '003 patent), attached as Appendix A. The specification of the instant Application discloses cartilage enzymatic hydrolysate extract prepared in accordance with the '003 patent on page 3, line 30 of the instant specification. The '003 patent demonstrates that, at the time of filing of the instant Application, the preparation of a cartilage enzymatic hydrolysate was known to one of ordinary skill in the art. Thus, the instant specification clearly enables one of ordinary skill in the art to practice the new claims of the instant Application involving cartilage enzymatic hydrolysate.

With regard to tomato extract, the specification describes the preparation of a tomato extract from tomato paste on page 17, lines 14, 15 and 26-32. Furthermore, the specification discloses that the tomato variety used to prepare the extract is *Lycopersicum esculentum* on page 5, lines 33-35. Accordingly, one of skill in the art would be enabled to practice the instant new claims relating to tomato extract.

Regarding the claims reciting *Acerola* extract, Applicant encloses with this submission a Product Data Sheet on *Acerola* extract, attached as Appendix B, with a Certificate of Analysis dated February 25, 1999. The Product Data Sheet demonstrates that *Acerola* extract was a commercially available product available through Scandi-link A/S. Therefore, given the commercial availability of *Acerola* extract at the time of filing the instant application, it is clear that one of skill in the art would be enabled to practice the new claims relating to *Acerola* extract.

Consequently, Applicant respectfully requests the Examiner to withdraw the rejection under § 112, para. 1.

Rejection Under 35 U.S.C. § 112, para. 2

The final Office Action states that claims 65-69, 73-76, 79, 82-87, 90-91 and 92-103 are rejected under 35 U.S.C. § 112, para. 2, as allegedly being indefinite. Applicant traverses this rejection of claims 65-69, 73-76, 79, 82-87, 90-91 and 92-103 based on indefiniteness.

Applicant respectfully submits that new claims 104-133 are definite because one of skill in the art would clearly understand the metes and bounds of the subject matter recited in these claims in view of the specification and the level of knowledge of the skilled artisan with respect to the claim terms recited in the instant new claims. For example, as discussed above with respect to particular extracts, the terms used in the instant claims have a clear meaning in the art and/or are clearly defined in the specification.

Applicant points out that new claim 111 recites the correct spelling of “xanthophyll.” In addition, Applicant points out that new claim 121, which recites “in a form for oral administration” is definite as it clearly recites “comprising tablets, powders, granules, capsules, sachets, solutions, suspensions, tonics or syrups, or a combination thereof.”

Therefore, Applicant respectfully requests the Examiner to withdraw the rejection under § 112, para. 2.

Rejection Under 35 U.S.C. § 102(b)

The final Office Action maintains the rejection of claims 65-69, 73-75 and 78 under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 5,569,458, issued to Greenberg (the “Greenberg ‘458 patent”), with evidence provided by Bombardelli, EP 0 659 402 (“Bombardelli”). Applicant traverses the rejection of claims 65-69, 73-75 and 78 as anticipated, and respectfully points out that, as conceded by the Examiner during the in-person interview on July 25, 2005, the Greenberg ‘458 patent does not anticipate claims 65-69, 73-75 and 78.

Applicant respectfully asserts that new claims 104-133 are not anticipated by the Greenberg ‘458 patent because the Greenberg ‘458 patent does not disclose, either explicitly or inherently, a method of increasing collagen synthesis or lessening the decrease in collagen

synthesis in the dermis comprising the oral administration of a composition comprising glycosaminoglycan, polyphenolic hydrophilic antioxidants and lycopene.

Therefore, Applicant respectfully requests the Examiner to withdraw the outstanding claim rejection under § 102(b).

Rejections Under 35 U.S.C. § 103(a)

The final Office Action states that claims 65-69, 71, 73-76, 78-91 and 92-103 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over the Greenberg '458 patent in view of Stedman's Medical Dictionary (Spraycar ed. 1995) ("Spraycar"), Bombardelli and Kosbab, WO 00/07607 ("Kosbab") and further in view of Hersh, U.S. Patent No. 5,906,811 ("the Hersh '811 patent") and Murad, U.S. Patent No. 6,630,163 ("the Murad 163 patent").

As a preliminary matter, due to a previous misunderstanding of the technology, Applicant wishes to correct a technical argument made previously by retracting Applicant's statements that Kosbab "do[es] not teach or suggest the composition of independent claim 65, as amended, which comprises glycosaminoglycan, polyphenolic hydrophilic antioxidants and lycopene" (*see* Amendment and Reply under 37 C.F.R. §1.111 filed on November 5, 2004, page 15, line 5-7 and page 16, lines 9-11) and "while Kosbab may disclose compositions comprising chondroitin sulphate, he does so in the context of a cancer preventative and therapeutic formula comprising numerous other ingredients. Kosbab (alone or in combination with any other reference applied in this rejection) fails to suggest the isolation of chondroitin sulphate from that formula and combination thereof with ingredients disclosed in Greenberg, Spraycar, Bombardelli, Hersh and Murad" (*see* Amendment and Reply under 37 C.F.R. §1.111 filed on November 5, 2004, page 16, lines 10-15).

Applicant herewith submits new claims 104-133 solely for the purpose of expediting prosecution. Applicant respectfully asserts that new claims 104-133 are not obvious over the Greenberg '458 patent in view of Spraycar, Bombardelli, Kosbab, the Hersh '811 patent and the Murad '163 patent because the cited references do not teach or suggest Applicant's invention involving a method of increasing collagen synthesis or lessening the decrease in collagen

synthesis in the dermis comprising the oral administration of a composition comprising glycosaminoglycan, polyphenolic hydrophilic antioxidants and lycopene.

Consequently, the present invention is not obvious, and Applicant respectfully requests that the outstanding rejections under § 103(a) be withdrawn.

CONCLUSION

In view of the foregoing Remarks, Applicant respectfully submits that claims 104-133 of the instant Application are in condition for allowance, and such disposition is earnestly solicited. Should the Examiner believe that any patentability issues remain after consideration of this Response, the Examiner is invited to contact the Applicant's undersigned representative to discuss and resolve such issues.

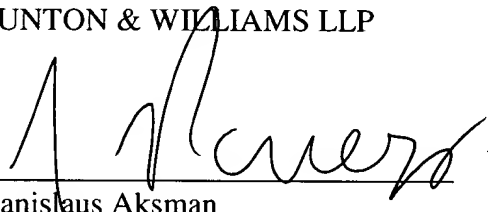
Applicant is submitting herewith an RCE along with the requisite fee of \$790.00 and a Petition for Three-Month Extension of Time with the requisite of \$1020.00. In the event that a variance exists between the amount tendered and that deemed necessary by the U.S. Patent and Trademark Office to enter and consider this Amendment and Reply or to maintain the present Application pending, please credit or charge such variance to the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,

HUNTON & WILLIAMS LLP

Dated: December 28, 2005

By:


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scandiQlink

PRODUCT DATA SHEET

| | |
|---------------------------|--------------------------|
| <u>Product:</u> | Acerola Powdered Extract |
| <u>Vitamin C content:</u> | Min. 25% |
| <u>Appearance:</u> | Light yellowish powder |
| <u>Carrier:</u> | Maltodextrine |
| <u>Moisture:</u> | Max. 5% |
| <u>Heavy Metals:</u> | ≤ 10 ppm |
| <u>Total Plate Count:</u> | ≤ 1000 CFU/gram |
| <u>Salmonella:</u> | Negative |
| <u>E.Coli:</u> | Negative |
| <u>Rutin:</u> | Negative |

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KOPI

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CERTIFICATE OF ANALYSIS

| | |
|---------------------------|--|
| <u>Date of Analysis:</u> | February 25, 1999 |
| <u>Product:</u> | Acerola Powdered Extract 25 % Vitamin C |
| <u>Lot no.:</u> | 301838 |
| <u>Appearance:</u> | Slight yellowish |
| <u>Odor:</u> | Slight |
| <u>Identification:</u> | Positive |
| <u>Vitamin C content:</u> | 26.70% |
| <u>Moisture:</u> | < 5.0% |
| <u>Heavy Metals:</u> | < 10 ppm |
| <u>Total plate count:</u> | < 1,000/gram |
| <u>Salmonella:</u> | Negative |
| <u>E.Coli:</u> | Negative |
| <u>Rutin:</u> | Not detected |

Acerola extract
nr: 4529588 batchnr 163297


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